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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 UNITED STATES OF AMERICA,

4 v.

15 CR 445 (PAE)

5 JONATHAN RODRIGUEZ, et al.,

6 Defendants.

7 -----x
8 New York, N.Y.
9 December 11, 2015
10:03 a.m.

10 Before:

11 HON. PAUL A. ENGELMAYER,

12 District Judge

13
14 APPEARANCES

15 PREET BHARARA

16 United States Attorney for the
17 Southern District of New York

JAMES McDONALD

17 SAMSON ENZER

DINA McLEOD

18 Assistant United States Attorneys

19 GERALD DiCHIARA

20 Attorney for Defendant Andrew Echevarria

JAMES ROTH

21 Attorney for Defendant Marquis Wright

22 JOHN DIAZ

23 Attorney for Defendant Jordan Rivera

KAFAHNI NKRUMAH

24 Attorney for Defendant Daquann McBeth

25 (Appearances continued on next page)

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APPEARANCES (Cont'd)

JOHN BURKE

Attorney for Defendant Raheem Amarizan

THOMAS DUNN

Attorney for Defendant William Knox

GUY OKSENHENDLER

Attorney for Defendant Miguel Romero

SCOTT TULMAN

Attorney for Defendant Kaye Rosado

STEPHANIE CARVLIN

Attorney for Defendant Naquann Simmons

JESSE SIEGEL

Attorney for Defendant Wilfredo Rivera

IRA LONDON

Attorney for Defendant Vincent Fielder

JOHN MERINGOLO

Attorney for Defendant Mia Dentico

AARON GOLDSMITH

Attorney for Defendant Pamela Brown

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1 (Case called)

2 MR. McDONALD: Good morning, your Honor. James
3 McDonald, Samson Enzer, and Dina McLeod for the government.

4 THE COURT: Very good.

5 THE DEPUTY CLERK: Counselors for the defense, present
6 for Andrew Echevarria.

7 MR. DiCHIARA: Gerald DiChiara, and Mr. Echevarria is
8 seated in the second row.

9 THE COURT: Why don't I ask everyone to be seated and
10 when my deputy, Mr. Smallman, calls the name of the defendant,
11 please raise your hand so that I can acknowledge you.

12 And, counsel, when you appear on behalf of a
13 defendant, please stand up so I can see you.

14 Good morning to you, Mr. DiChiara.

15 Where is Mr. Echevarria? Very good. Good morning to
16 you.

17 THE DEPUTY CLERK: Jonathan Rodriguez.

18 THE COURT: Where is Mr. Rodriguez?

19 MR. McDONALD: Your Honor, Mr. Rodriguez was arrested
20 in upstate New York and he's not yet been transferred down here
21 to the Southern District.

22 THE COURT: Very good. Thank you.

23 THE DEPUTY CLERK: Marquis Wright.

24 MR. ROTH: Good morning, your Honor. James Roth on
25 behalf of Mr. Wright.

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1 THE COURT: Good morning to you, Mr. Roth, and good
2 morning to you, Mr. Wright.

3 THE DEPUTY CLERK: Wali Burgos.

4 MR. McDONALD: Your Honor, defendant Burgos is
5 currently in state custody and hasn't been transferred down to
6 federal custody just yet.

7 THE COURT: All right. Thank you.

8 THE DEPUTY CLERK: Jason Benjamin.

9 MR. McDONALD: Jason Benjamin was also arrested on
10 December 9 in the Northern District of New York and has not yet
11 been transferred down to Southern District.

12 THE COURT: Very good.

13 THE DEPUTY CLERK: Jordan Rivera.

14 MR. DIAZ: Good morning, your Honor. John Diaz
15 appearing for Mr. Rivera.

16 THE COURT: Good morning.

17 THE DEPUTY CLERK: William Amarizan.

18 MR. NKRUMAH: Good morning, your Honor. Kafahni
19 Nkrumah standing in for Ms. Susan Marcus and Mr. Amarizan.

20 THE COURT: Good morning.

21 Mr. Nkrumah, any idea why Ms. Marcus is not able to be
22 here today?

23 MR. NKRUMAH: No, your Honor. I know when we did the
24 presentment, she asked if I could stand in.

25 THE COURT: I understand. Given that the arrests in

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1 this case were made two days ago and that the first conference
2 was today, I can understand that. I fully expect she'll be
3 able to be here at future conferences. Thank you.

4 THE DEPUTY CLERK: Raheem Amarizan.

5 MR. BURKE: Good morning, your Honor. For
6 Mr. Amarizan, John Burke.

7 Judge, with the Court's permission, I have a sentence
8 at 10:30, so Mr. Meringolo will cover for me if I have to leave
9 at 10:20.

10 THE COURT: Very good. Good morning to you,
11 Mr. Amarizan. Good morning to you, Mr. Burke. And thank you
12 for bringing that to my attention. Of course, that's fine.

13 THE DEPUTY CLERK: Tjon Macoll.

14 MS. CARVLIN: Yes, good morning, your Honor.
15 Stephanie Carvlin. I am appearing on behalf of Michael Sporn,
16 your Honor, for Mr. Macoll. Mr. Sporn had a preexisting court
17 appearance for today.

18 THE COURT: Very good. Mr. Macoll, who are you? Good
19 morning to you.

20 Ms. Carvlin, thank you for covering today.

21 THE DEPUTY CLERK: Corey Heyward.

22 MR. McDONALD: Your Honor, Corey Heyward is one of
23 three defendants in this indictment who have not yet been
24 apprehended.

25 THE COURT: Thank you.

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1 THE DEPUTY CLERK: Jonathan Harris.

2 MR. McDONALD: I should have said, your Honor, that
3 Corey Heyward was one of five defendants who have not yet been
4 apprehended. There are two who we have been informed will be
5 self-surrendering this morning. Jonathan Harris is one of
6 them.

7 THE DEPUTY CLERK: William Knox.

8 MR. DUNN: For William Knox, Thomas Dunn. Good
9 morning, your Honor.

10 THE COURT: And where is Mr. Knox?

11 MR. DUNN: He's standing up.

12 THE COURT: Good morning, Mr. Knox. Good morning,
13 Mr. Dunn.

14 THE DEPUTY CLERK: Corey Cooks.

15 MR. McDONALD: Corey Cooks, your Honor, is the second
16 defendant who we anticipate to self-surrender this morning.

17 THE DEPUTY CLERK: Daquann McBeth.

18 MR. NKUMAH: Good morning, your Honor. Mr. Nkrumah
19 for Mr. McBeth, who's standing.

20 THE COURT: Good morning, Mr. McBeth. Thank you.
21 Good morning, Mr. Nkrumah.

22 THE DEPUTY CLERK: Jahnomi Benjamin.

23 MR. McDONALD: Defendant Benjamin is currently in
24 state custody, your Honor, and has not yet been writted down to
25 federal custody.

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1 THE DEPUTY CLERK: Keith Ruiz.

2 MR. McDONALD: Keith Ruiz is currently in federal
3 custody in Florida, your Honor, and has not yet been
4 transferred to the Southern District.

5 THE COURT: Thank you.

6 THE DEPUTY CLERK: Ryan Valentin.

7 MR. McDONALD: Ryan Valentin, your Honor, is one of
8 the three remaining defendants who have not yet been
9 apprehended, assuming that the two that we believe will be
10 self-surrendering this morning do in fact self-surrender.

11 THE DEPUTY CLERK: Miguel Romero.

12 MR. OKSENHENDLER: Good morning, your Honor. I'm Guy
13 Oksenhendler for Mr. Romero.

14 THE COURT: Good morning, Mr. Romero. Good morning to
15 you, Mr. Oksenhendler.

16 THE DEPUTY CLERK: Kaye Rosado.

17 THE COURT: All right. Good morning to you,
18 Mr. Rosado.

19 MR. DUNN: Your Honor, I'll stand up for Scott Tulman,
20 who's the attorney. I'll stand up for purposes of the
21 conference.

22 THE COURT: Thank you, Mr. Dunn, for standing in for
23 Mr. Tulman. He in fact notified our chambers that he was
24 running late this morning.

25 THE DEPUTY CLERK: Naquann Simmons.

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1 MS. CARVLIN: Good morning again, your Honor.
2 Stephanie Carvlin for Naquann Simmons.

3 THE COURT: Good morning.

4 THE DEPUTY CLERK: Diquinn Lacend.

5 MR. McDONALD: Your Honor, Diquinn Lacend is currently
6 in state custody and has not yet been transferred to federal
7 custody.

8 THE COURT: Thank you.

9 THE DEPUTY CLERK: Wilfredo Rivera.

10 MR. SIEGEL: Good morning, Judge. Jesse Siegel for
11 Mr. Rivera.

12 THE COURT: Good morning.

13 THE DEPUTY CLERK: Kenneth Jenkins.

14 MR. McDONALD: Kenneth Jenkins, your Honor, is the
15 final defendant who has not yet been apprehended.

16 THE COURT: Thank you.

17 THE DEPUTY CLERK: Vincent Fielder.

18 MR. LONDON: Ira London for Vincent Fielder.

19 THE COURT: Good morning, Mr. London. Good morning to
20 you, Mr. Fielder.

21 THE DEPUTY CLERK: Mia Dentico.

22 MR. MERINGOLO: Good morning, your Honor. John
23 Meringolo for Ms. Dentico.

24 THE COURT: Good morning.

25 THE DEPUTY CLERK: Pamela Brown.

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1 MR. GOLDSMITH: Good morning, your Honor. Aaron
2 Goldsmith on behalf of Ms. Brown.

3 THE COURT: Good morning, Mr. Goldsmith. Good morning
4 to you, Ms. Brown.

5 With respect to the defendants who have not yet
6 appeared, I have no choice today but to set an overall global
7 schedule which will bind them. That said, I'm interested in
8 making had sure that they and their counsel get before me as
9 soon as possible. Therefore, I will ask the government to
10 contact my chambers as individual defendants are apprehended or
11 brought into the district, as the case may be. Ideally, we can
12 come up with a date next week to capture as many of those
13 people in one conference as possible so as not to have a need
14 for too many one-off conferences. But I'll ask the government
15 to be proactive in keeping me abreast of the state of play with
16 respect to those defendants.

17 MR. McDONALD: Of course, your Honor.

18 THE COURT: All right. I have a number of
19 housekeeping matters. To begin with, I want to acknowledge, to
20 the extent there are people in the overflow room, I want to
21 welcome you. Not knowing how many friends or family would be
22 here today, we arranged for an overflow room in Courtroom 506
23 so that friends or family would be able to listen. It may be
24 that that's unnecessary. There appears to be extra space here.
25 But to the extent there are people in Room 506, I want to

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1 welcome you.

2 Counsel, I understand from my deputy that no defense
3 lawyers have indicated there's a need for interpreters. Is
4 that correct?

5 MR. ROTH: Yes, your Honor.

6 THE COURT: Thank you. I want to also just take a
7 moment and thank our marshals and court security officers.
8 Obviously, in a case of this scale, there's a lot of planning
9 that goes into organizing a conference like this and keeping
10 everything orderly and safe. And so I want to thank everyone
11 for their efforts in organizing today. Thank you.

12 With respect to that, the marshals and court security
13 officers advised my chambers that given the sheer number of
14 defendants, there would be a need for restraints to be put on
15 the defendants today given the sheer number of people.
16 Obviously, that's not an ideal situation, but I hope everyone
17 understands that it is inherent in the number of people put
18 together in the jury box. As the case moves forward, we'll be
19 attentive to figuring out if there are ways to avoid that in
20 the future. I just want everyone to know I'm sensitive to the
21 situation. All right.

22 With respect then to today, here's what I'm going to
23 do. I want to give you, first of all, an overview of the
24 ground I intend to cover and then we'll go through each of the
25 individual items.

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1 To begin with, I'll be calling shortly on government
2 to give me reports on a number of fronts. These were largely
3 the ones that were covered in the order that I issued
4 yesterday, but they include a description of the scope and
5 nature and charges in the case, a description of the nature of
6 discovery in the case. I want a report on the types of
7 searches and seizures and postarrest statements that may have
8 occurred in the case so that we can all get an early read out
9 on areas of potential suppression motions. And I'm interested
10 really in getting the government's view on the trajectory of
11 the case going forward, including the possibility of
12 superseding indictments and the like.

13 After we go through all those topics, I'm going to
14 open the floor to defense counsel to raise any and all issues.
15 One of the issues that's foremost on my mind is to set a
16 rational next conference date in the case, and I'll be
17 interested in counsel's views on the subject.

18 For everyone's benefit, although I'm obviously open to
19 hearing contrary views, my initial view, which is informed in
20 part by having handled a 76-defendant gang case that spanned
21 the last several years, is that in a case of this scale, it's
22 better to go step by step. It's ill advised to commit at a
23 first conference to a long term schedule, including a trial
24 date and things of that nature. I'm very much mindful that the
25 scope of charges may change, the number of defendants may

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1 change and expand. There may be superseding indictments.

2 And so it seems to me rational instead at an initial
3 conference like this to start the process of educating all of
4 us as to what this case is about and to set a next conference
5 date that's far enough into the future that defense counsel are
6 up to speed as to what the case looks like and so that we all
7 when we come together again will have a better sense of the
8 challenges presented by this case.

9 And so subject to what I hear from counsel today, my
10 expectation is that at the end of this conference, I'm going to
11 set a next conference date probably a couple of months from
12 now. And my expectation is that at that conference we would be
13 taking up, among other things, perhaps a deadline for a
14 superseding indictment, a timetable for addressing suppression
15 motions, and possibly a trial date or dates. Again, I'm open
16 to hearing contrary views. But borne of the experience in a
17 much larger gang case, that seems to me the rational way to go
18 here.

19 I want to say a word or two looking far down the road
20 about the prospect of a trial in this case. I want to
21 underscore in particular something I wrote in the order that I
22 issued yesterday. There are some 26 or so defendants named in
23 the indictment and something short of 20, but not far short,
24 defendants present here today. I have and I suspect no one
25 here has any way to project how many of these defendants will

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1 one day go to trial, if any. But so that all counsel know, it
2 is my policy not hold any single trial involving more than
3 approximately five defendants.

4 In my judgment and experience, a trial on that scale
5 simply is unfair to the defendants. It's impossible for a jury
6 or hard for a jury to keep the defendants and the individual
7 charges straight. And so as a matter of ensuring fairness to
8 the defendants in the event down the road we get to a point
9 where there are more than approximately five defendants going
10 to trial, it's my expectation that we would have multiple
11 trials to avoid that problem.

12 All of this is obviously for far down the road. It's
13 going to become much clearer over time which defendants are
14 likely to go to trial and which of those defendants are
15 properly and fairly tried together. But I wanted to put down a
16 marker and a reassurance at this point about that. When the
17 case has taken more shape and counsel can better advise me in
18 the event that numerous defendants appear to be headed towards
19 trial, we can take up the issue of what the right group or
20 groups are.

21 As a final preface before I call on the government, I
22 want to say a word about issues that are specific to individual
23 defendants. I fully expect there are going to be some such
24 issues. They may involve matters of bail. They may involve
25 matters of representation. This many defendant conference is

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1 not the forum at which to resolve those issues.

2 With respect to bail, here is how I'd like to proceed.
3 In the event that either party wants to appeal an adverse bail
4 determination, please get a determination from the magistrate
5 judge, in other words, fully litigated in front of the
6 magistrate judge. If you are dissatisfied and you want to
7 appeal the outcome, call my chambers and schedule a conference
8 with my deputy, Mr. Smallman. Make sure that in advance of the
9 conference I have the pretrial services report and the
10 transcript of the hearing before the magistrate judge so that I
11 can familiarize myself with it before the bail appeal
12 conference.

13 For everyone's benefit, two such appeals were heard
14 yesterday involving defendants Dentico and Brown. And
15 following this conference, after we take a brief break, I will
16 be continuing that conference today. I left the issue there
17 unresolved at the end of yesterday's conference.

18 Relatedly, in my experience, there may be issues
19 relating to representations, individual representations. I've
20 already received a letter from Mr. Dunn relating to his client,
21 Mr. Knox, indicating there may be an issue in connection with
22 that representation. I'm happy to have an individual
23 conference scheduled to take that up, but I'm not going to do
24 it in front of the whole group.

25 MR. DUNN: Your Honor, at this point it's in abeyance

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1 or withdrawn.

2 THE COURT: Very good. You'll let me know if you
3 believe or your client believes a conference of that nature is
4 necessary and I'll be happy to schedule one. Okay?

5 MR. DUNN: Thank you, your Honor.

6 THE COURT: But thank you for your letter. I
7 appreciated it.

8 With that and with that lengthy preface, let me call
9 on the government. I want to take this step by step.

10 I take it, Mr. McDonald, you'll be the primary
11 spokesman today?

12 MR. McDONALD: Yes, your Honor.

13 THE COURT: Tell us about the case. I'm interested in
14 understanding the overall charges.

15 MR. McDONALD: Sure, your Honor.

16 The superseding indictment in this case charges 26
17 defendants in six counts.

18 Count One is a racketeering conspiracy which charges
19 all 26 defendants with the racketeering conspiracy.

20 Count Two is murder in aid of racketeering.

21 Count Three is assault with a deadly weapon and
22 attempted murder in aid of racketeering.

23 Count Four is another assault and attempted murder in
24 aid of racketeering charge.

25 Count Five charges a narcotics conspiracy.

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1 And Count Six charges using and carrying and
2 possessing a firearm during and in relation to the racketeering
3 conspiracy, which was discharged.

4 The charges in this case arise out of a federal
5 investigation that is included in an investigation by this U.S.
6 Attorney's Office, the ATF, the DEA, and the New York City
7 Police Department. That investigation has been ongoing for
8 more than a year, and there was an ongoing New York City Police
9 Department investigation into the activities of the enterprise
10 which is known as 18 Park even before then.

11 THE COURT: What does 18 Park refer to?

12 MR. McDONALD: 18 Park is a violent street gang, your
13 Honor, and the name was derived from the fact that many of the
14 members of 18 Park attended the same elementary school in the
15 area which is known as PS 18 and there's a park right outside
16 it. And so the individuals who lived in the area went to
17 elementary school together in the area and really what began as
18 a relationship between individuals who went to school together
19 matured into a relationship that involved a gang, violent
20 activity, and narcotics trafficking.

21 There are various points in time when the gang was
22 known by other names. Initially they were known as Young Money
23 and there were a few other names before they ultimately settled
24 on the name 18 Park. The gang has a handshake. There are
25 signs. The gang has a hierarchy. The older members of the

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1 gang lead the gang. They can direct the activities of the
2 younger members. They resolve disputes among the younger
3 members, and they set rules or give advice.

4 For example, typically when the members and associates
5 of the gangs conduct shootings, 13 of which are specified as
6 overt acts in this indictment, the older members have told the
7 younger members, when you're going to commit a shooting, go in
8 groups. Three is ideal, two is better than one. And when you
9 do these shootings, one person is the shooter. That person
10 carries the gun and commits the shooting. One person serves as
11 a lookout. The third person should serve to hold the door to
12 one of the Patterson House buildings. That's because these
13 doors often lock.

14 And what you see in a lot of these shootings is you
15 see the members of 18 Park going into an area -- just to use
16 one example, the October 2, 2014 shooting. That's an attempted
17 murder of Daymar Morales, which is charged in Count Three of
18 the indictment. That involved defendant Wali Burgos, defendant
19 Jordan Rivera, defendant Corey Cooks, and a co-conspirator who
20 is not named in the indictment.

21 During that shooting there's video surveillance that
22 shows Wali Burgos, Jordan Rivera, and Corey Cooks meeting in
23 the Patterson House building. They're gathering there. Then
24 you see them from a different angle looking out the back window
25 of the back door. They see the leader of the rival gang walk

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1 through the courtyard. You see defendant Corey Cooks open the
2 door and he holds the door while defendant Wali Burgos steps
3 outside and fires a number of shots at the leader of the rival
4 gang. The shots didn't hit the rival gang -- this is all shown
5 on video surveillance -- but it hit his hat and it knocked the
6 baseball cap he was wearing off his head. The member of the
7 rival gang ducked down, runs into the other building.

8 I'll talk about the scope of discovery here in just a
9 few minutes and what the discovery will entail, but that same
10 day, October 2, 2014, defendant Burgos sent a Facebook message
11 to this member of the rival gang and the Facebook message said
12 "almost."

13 So there is a hierarchy to the gang. There are
14 leaders who direct the activity of the younger members of the
15 gang. They give them direction as to how to carry out their
16 violent acts. They also give them direction as to how to carry
17 out narcotics activity. The older members of the gang
18 typically supply the drugs to the younger members. The older
19 members and the leaders of the gang are typically not the ones
20 who are out there doing the hand-to-hand sales, but they go get
21 the drugs. They bring them to various stash houses.

22 For a long period of time, that stash house was the
23 residence of defendant Mia Dentico. Later, the stash house
24 became an apartment that was the residence of another
25 coconspirator of the gang who is not named in this indictment.

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1 Over time, the operation of the gang expanded.
2 Initially it was focused primarily in the Patterson Houses.
3 That's still the central focus of the gang. That's still where
4 most of the violent activity occurs. And within the Patterson
5 Houses, 18 Park occupies the north side. East 143rd Street
6 serves at the dividing line between 18 Park on the north side
7 of the Patterson Houses and a rival gang that occupies the
8 territory on the south side of Patterson Houses. That
9 territory, each gang views it as its own turf. It's that
10 gang's territory in which it sells narcotics and which it
11 protects with violent activities and it seeks to expand or
12 seeks to encroach upon the other gang's territory.

13 THE COURT: I may be getting ahead of you here, but at
14 least I noted that a substantial multidefendant case was
15 brought apparently around the same time involving a gang called
16 the Young Gunnaz. Is that the rival gang you're referring to?

17 MR. McDONALD: That actually is not the rival gang I'm
18 referring to, your Honor.

19 There were three gangs operating in the area, two of
20 which are subject to indictments that were unsealed on
21 Wednesday. The Young Gunnaz is the gang I was just about to
22 turn to. They operate primarily in the Mott Haven Houses
23 development, and that's a housing development that borders the
24 Patterson Houses. It's very near the Patterson Houses, but
25 it's not based within the Patterson Houses.

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1 The other rival gang that I referred to earlier is
2 subject to an ongoing federal investigation.

3 THE COURT: Is there any relationship between this
4 case and the indictment in the Young Gunnaz case?

5 MR. McDONALD: There is, your Honor. They are also
6 rival gangs. For a substantial period of time, the Young
7 Gunnaz were affiliates of the rival gang that I referred to on
8 the south side of the Patterson Houses. The Young Gunnaz was a
9 more mature, larger organization. It had access to more
10 firearms and was a more violent gang and so they came in and
11 protected the younger --

12 THE COURT: I take it there are no defendants in
13 common to the two cases.

14 MR. McDONALD: There are no defendants in common to
15 the two cases, though there is substantial overlap in evidence.

16 THE COURT: Okay. Thank you. All right. That's very
17 helpful. Thank you.

18 Let me just ask you to the extent that you can say,
19 let me begin with this. I noted that there is a murder that is
20 charged in the indictment of Johnny Moore, May 29, 2011, and
21 the defendant Keith Ruiz is named in that. Is that murder
22 subject to potential capital review?

23 MR. McDONALD: That is, your Honor. Our office has
24 submitted an extenuating circumstances memorandum to
25 Washington, D.C., and we will keep them apprised. But it is

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1 subject to capital review, your Honor.

2 THE COURT: All right. Thank you.

3 To the extent you can say, is there anything you can
4 tell me at this stage vis-a-vis the potential for superseders?

5 MR. McDONALD: Yes, your Honor. This indictment goes
6 into great detail as to a number of the violent acts that this
7 gang is responsible for, but this is not all the violent acts.
8 We're continuing to investigate. We're continuing to
9 investigate the May 29, 2011 murder of Johnny Moore. It's
10 correct defendant Keith Ruiz is charged with that murder.
11 There is a possibility that other defendants, including other
12 defendants named this indictment, would be charged with that
13 murder.

14 The office is currently investigating other murders
15 that we believe that members of 18 Park are responsible for.
16 And the office is continuing to investigate other violent acts,
17 including some of the other violent acts that are listed in the
18 overt act portion of the indictment that could result in other
19 substantive charges of violent acts in aid of racketeering
20 along the lines of Counts Three and Four of this indictment.

21 So to answer your Honor's question, there is a
22 possibility that there would be a superseding indictment,
23 though we're prepared to proceed on this indictment.

24 THE COURT: All right. Thank you. Very helpful.

25 All right. Continuing on the list of topics that I

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1 indicated to you in my order yesterday I'd be asking you about,
2 can you give an overview of the Rule 16 discovery with a
3 particular focus on what has been produced, if anything, what
4 remains to be produced, and what the timetable is likely to be.

5 MR. McDONALD: Yes, your Honor. There are a number of
6 different categories of discovery and I'll run through them one
7 at a time for the Court.

8 The first category are Title III wiretap intercepts.
9 With respect to those, the government is prepared to produce
10 the applications, the orders, the calls themselves, the draft
11 line sheets and transcripts subject to a draft transcript
12 stipulation signed by each of the defense counsel.

13 And to give the Court an overview of the extent of
14 that wiretap material, there was a 2015 Southern District of
15 New York wiretap. That was a roving wiretap and that was a
16 wiretap of the various and changing cell phones that were
17 utilized by defendant Marquis Wright. Over the period of time,
18 there was a three-month period of time, so there were three
19 separate wiretap orders on defendant Wright's phones. During
20 the roving interception period, he used at least 11 different
21 cellular telephones.

22 He was arrested on a state marijuana charge and he had
23 seven cellular phones at that time.

24 THE COURT: When was he arrested?

25 MR. McDONALD: Your Honor, I don't have the exact date

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1 in front of me, but it was in the fall of 2015.

2 THE COURT: And he had seven phones on his person?

3 MR. McDONALD: Seven phones on his person.

4 The government, pursuant to the roving wiretap orders,
5 intercepted communications from six different phones used by
6 defendant Wright. There are approximately 10,000 calls that
7 were intercepted, and those interceptions covered the time
8 period from August of 2015 to the date of the arrest,
9 December 9, 2015.

10 THE COURT: And of the 10,000 calls intercepted, is
11 there any way of giving me a rough estimate of how many appear
12 potentially relevant here?

13 MR. McDONALD: I don't have a specific number, your
14 Honor, but I would say it's a large percentage of them.

15 And just to give your Honor a little bit of context,
16 defendant Wright also maintained one cell phone that was a
17 clean cell phone. On some of these intercepted communications,
18 one that I'm thinking of in particular, defendant William
19 Amarizan calls defendant Marquis Wright and says is this your
20 dirty cell phone. He says yes, go ahead. And then they
21 proceed to discuss narcotics distribution activity.

22 THE COURT: Which is I take it your way of saying that
23 of the 10,000 calls, it's reasonable to assume not that many
24 are going to be, from your perspective, clean calls, that these
25 are phones to which are allocated calls in furtherance of the

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1 gang.

2 MR. McDONALD: Correct, your Honor. That was the
3 purpose of these cell phones. They were dropped on a regular
4 basis.

5 THE COURT: All right. So from a planning perspective
6 what it means is that defense counsel who received the
7 discovery here, potentially they're going to be going through a
8 great number of potentially relevant calls.

9 MR. McDONALD: That's correct, your Honor.

10 THE COURT: Okay. How useful will the line sheets be?
11 What I'm trying to do is make an early gauge of how much work
12 there will be and what shortcuts or road maps there will be for
13 the defense to take the measure of the case.

14 MR. McDONALD: Your Honor, the line sheets will be
15 useful for the Southern District of New York intercepts.
16 There's a second category of intercepts which I'll -- just to
17 stay with the Southern District intercepts, those are full line
18 sheets. They're draft transcriptions, but they're draft
19 transcriptions of the full conversations. They're the
20 traditional line sheets that defense counsel will have seen
21 that list the phone numbers, the time of the call, the duration
22 of the call, and the content to the best of the transcriber's
23 ability.

24 THE COURT: And I take it the stipulation you have in
25 mind is one that makes it clear that the government is not

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1 bound by any of the rough or draft transcripts that were
2 created for investigative purposes.

3 MR. McDONALD: That's exactly right, your Honor.

4 THE COURT: Okay. Go ahead.

5 MR. McDONALD: There is a second category of Title III
6 intercepts and these are Title III intercepts that were
7 conducted pursuant to an order of interception or to four
8 separate orders of interception issued by the Northern District
9 of New York. Two of those orders related to a cellular
10 telephone utilized by an individual who is not named in this
11 indictment, but there were relevant communications intercepted.

12 THE COURT: Including with defendants here?

13 MR. McDONALD: Including with defendants here, yes, on
14 that intercept. A much smaller percentage of those intercepts
15 would be relevant to this case, but there are some, and we're
16 prepared to produce everything.

17 THE COURT: And is there some way in which to guide
18 defense counsel, you'll be able to steer them to calls that are
19 of more likely relevance to this case?

20 MR. McDONALD: We will, your Honor.

21 So there were two orders of interception issued by the
22 Northern District of New York as to a target who is not named
23 in this indictment but as to whom a number of the defendants
24 appear on the intercepted communications. There were also two
25 orders of interception issued in the Northern District of New

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1 York that intercepted communications from two different
2 cellular telephones used by Jonathan Rodriguez, who is the
3 defendant listed first in this indictment.

4 THE COURT: Right.

5 MR. McDONALD: These interceptions occurred --

6 THE COURT: Is there a reason he's listed first? Is
7 he denoted as a leader of the gang?

8 MR. McDONALD: He is denoted as a leader of the gang,
9 your Honor.

10 These intercepted communications occurred from April
11 of 2015 to June of 2015. As to those, just like as to the
12 Southern District of New York intercepted communications, we'll
13 produce the applications, the orders, the calls, and the draft
14 transcriptions. Those draft transcriptions are not the
15 traditional line sheets like we have here in the Southern
16 District of New York. They're draft summaries. We don't have
17 all the audio calls in our possession right now, but we expect
18 to get them. I was informed yesterday that we expect to get
19 them by the end of the day today.

20 THE COURT: And anything you can tell me about scale
21 with respect to the four Northern District cell phones,
22 including the two relating to Rodriguez?

23 MR. McDONALD: I don't have an exact number, your
24 Honor, but it's in the thousands. I don't think it's more than
25 10,000, but I think it's of a similar volume to the Southern

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1 District of New York.

2 THE COURT: As to the Rodriguez calls, is it your
3 expectation that those two are overwhelmingly potentially
4 relevant here as opposed to extraneous?

5 MR. McDONALD: They are overwhelmingly potentially
6 relevant. Rodriguez had more clean conversations, but those
7 weren't intercepted because they were nonpertinent.

8 In terms of the intercepted communications, yes,
9 Rodriguez went to Massena, New York, in large part to further
10 and to expand 18 Park's narcotics distribution activity and to
11 move it up to Massena, New York, or expand it to Massena, New
12 York, where the narcotics could be sold for higher prices. He
13 also, it's revealed from the intercepted communications, moved
14 to Massena, New York, because he was aware of this federal
15 investigation and he was hoping to evade law enforcement. But
16 one of the purposes of moving to upstate New York was to expand
17 18 Park's drug trafficking there.

18 A number of the defendants here are implicated in that
19 drug trafficking activity, including arrests in Massena, New
20 York, communications with Jonathan Rodriguez, and seizures of
21 narcotics when they were being transported up to him in
22 Massena, New York.

23 THE COURT: Okay. So just to recap as to the Title
24 IIIs, you'll be producing all the underlying applications for
25 all of these Title IIIs.

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1 MR. McDONALD: Yes, your Honor.

2 THE COURT: And you'll be producing ultimately the
3 line sheets or their equivalent, as well as the actual audio
4 intercepts.

5 MR. McDONALD: Yes, your Honor. And when we're
6 through the different categories, the government has a proposed
7 schedule. We expect to be able to do that in the next 30 days.

8 THE COURT: Let's go through the other categories and
9 then you can give me the schedule. Thank you.

10 MR. McDONALD: There were approximately 50 undercover
11 purchases of narcotics from approximately ten members and
12 associates of 18 Park who are named in this indictment. In
13 many cases, there is audio and/or video of the purchases. In
14 every case, there's a lab report of the purchase and there are
15 the accompanying law enforcement documents.

16 THE COURT: What types of narcotics?

17 MR. McDONALD: It was crack cocaine and marijuana.
18 And a smaller number of times it was heroin, but it was
19 primarily crack cocaine and marijuana in the undercover buys.

20 Your Honor, there is footage from two different pole
21 cameras, one of which was located at 331 East 146th Street,
22 which is just outside one of the primary stash houses.

23 THE COURT: Is that near 18 Park itself?

24 MR. McDONALD: It is, your Honor.

25 THE COURT: How long was the pole camera up?

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1 MR. McDONALD: The pole camera was up from October of
2 2014 to the date of the arrest, December 9, 2015.

3 THE COURT: Both pole cameras?

4 MR. McDONALD: That's just one pole camera.

5 There's a second pole camera that was set up in the
6 vicinity of 1114 White Plains Road, which is the location of
7 the apartment where defendant Marquis Wright resides. That
8 pole camera was up from August of 2015 to the date of the
9 arrest, December 9, 2015.

10 There is also surveillance video and photographs of
11 the defendants that were taken during the course of this
12 investigation.

13 The way the surveillance works in the Patterson
14 Houses, there are New York City Housing Authority cameras that
15 are constantly running. They're retained for a short period of
16 time. And when we request particular footage, they will
17 download the footage and give it to us. So we have that
18 footage as it relates to a number of the violent incidents that
19 are listed in the indictment, as well as a number of other
20 incidents that are relevant to the investigation.

21 There was a live video feed that was set up in the New
22 York City Housing Authority, the Patterson Houses building, 331
23 East 146th Street, just outside the apartment in that building
24 which was used as one of the primary stash houses.

25 THE COURT: This video feed was set up for

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1 investigative purposes?

2 MR. McDONALD: It was set up for investigative
3 purposes.

4 (Pause)

5 MR. McDONALD: Your Honor, that camera was set up for
6 security purposes, though the management of the building gave
7 access --

8 THE COURT: Thank you.

9 MR. McDONALD: -- to law enforcement.

10 Also, your Honor, there were a number of search
11 warrants that had been executed.

12 To begin, there were two search warrants that were
13 executed in connection with the arrests in this case. One
14 search warrant was executed on the same 1114 White Plains Road
15 address that I mentioned earlier, the residence of defendant
16 Marquis Wright. That search warrant uncovered three cell
17 phones; approximately 14 grams of crack cocaine that was laid
18 out on a cookie sheet drying -- it had just been cooked in the
19 kitchen -- above the kitchen cabinets; approximately 50 grams
20 of powder cocaine; approximately 72 grams of marijuana; about
21 \$3,000 of cash.

22 There were a number of other search warrants. I guess
23 one more that was executed on December 9. That was the search
24 warrant that was executed at 331 East 146th Street. Narcotics
25 paraphernalia was discovered there.

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1 There were several other search warrants. There was a
2 search warrant that was executed June 11, 2015, on the
3 residence of defendant Andrew Echevarria. Crack cocaine, a
4 firearm, and ammunition were recovered.

5 There was a search warrant that was executed on
6 December 12, 2013 on the residence of Mia Dentico, which was at
7 the time 18 Park's primary stash house. There were 130 grams
8 of crack cocaine; a number of other quantities and types of
9 narcotics; a number of different types of live rounds of
10 ammunition; large amount of cash; and nine other, in addition
11 to defendant Dentico who was present, nine other defendants
12 named in the indictment were present during the execution of
13 that search warrant.

14 MR. DUNN: Your Honor, I'm sorry to interrupt. I have
15 to be up in the Bronx at 11:30. Mr. Siegel will cover the rest
16 if that's okay with your Honor.

17 THE COURT: It is. I thank you.

18 MR. DUNN: Thank you.

19 MR. McDONALD: There were a number of other search
20 warrants, your Honor, on various cellular telephones that were
21 seized in connection with arrests of a number of the different
22 defendants. Those search warrants were conducted pursuant to
23 delayed notice provisions.

24 THE COURT: Sorry. The arrests though, are these the
25 arrests that took place this week or earlier?

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1 MR. McDONALD: No, your Honor. Those are prior state
2 arrests.

3 THE COURT: But those searches are pursuant to
4 warrant?

5 MR. McDONALD: They're pursuant to a federal warrant,
6 your Honor. The federal warrant had a delayed notice
7 provision. These were sneak and peek search warrants so as not
8 to alert the defendants to the federal investigation or at
9 least to the scope of the federal investigation or the
10 particular targets.

11 One of those search warrants was executed on a
12 cellular telephone that was seized from defendant Jordan Rivera
13 in connection with one of his state arrests. Among other
14 things, on that cellular telephone is a video that Jordan
15 Rivera took of himself. It appears from the context of the
16 video that he is planning to send it to a female with whom he's
17 associated. And in that video he says, and I'm quoting from
18 the video, it was for the family. I had to shoot that -- I'll
19 paraphrase a little bit.

20 THE COURT: I had to shoot a person, not shoot a
21 video?

22 MR. McDONALD: Your Honor, to quote it: I had to
23 shoot that nigga. That nigga jumped my brother. I ain't going
24 to lie. I'm going to kill one of those niggas. I just want
25 you to hold me down while I'm in jail. The feds, fuck the

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1 feds. I don't give a fuck about the feds. Suck my dick
2 motherfucker.

3 I apologize for the language, your Honor. There's a
4 number of other evidence of that variety that was seized from
5 the cellular telephones that were searched pursuant to a
6 federal search warrant subject to a sneak and peek provision.

7 THE COURT: Were other phones seized incident to the
8 arrests this week?

9 MR. McDONALD: There were a number of other phones
10 incident to the arrests this week. The government has not
11 obtained search warrants for those. We expect that we will.
12 That's an example, your Honor, of the type of thing we expect
13 to produce in the second category of discovery when we get to
14 the various phases. The government's proposal is there be a
15 Phase 1, which would be the first 30-day period; Phase 2, which
16 would be the second.

17 THE COURT: Let's round out the discovery and then
18 talk about the phases.

19 MR. McDONALD: So that in large part covers the search
20 warrants that would potentially be at issue in this case.

21 THE COURT: What other discovery is there in the case?

22 MR. McDONALD: There are a number of prison calls and
23 emails, your Honor, from both federal and state facilities,
24 with respect to a number of the different defendants.

25 In another category there are the associated law

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1 enforcement materials or the law enforcement materials that are
2 associated with the numerous violent acts that are under
3 investigation, many of which are listed in the indictment.

4 THE COURT: When you say law enforcement materials, I
5 think I have some sense of this from the prior case I
6 mentioned, but what are you referring to specifically?

7 MR. McDONALD: Complaint reports, arrest reports. To
8 the extent that they are Rule 16 discovery and not Rule 3500,
9 the material that's in the state case file. Most of these
10 incidents were initially investigated by the state. There was
11 New York City Police Department paperwork, again, complaint
12 reports, arrest reports, booking information.

13 THE COURT: In other words, you've already taken the
14 trouble to go get those files so that to the extent there are
15 records of, hypothetically, fingerprints or bullet fragments,
16 you've got that stuff or you've tried to.

17 MR. McDONALD: That's correct, your Honor.

18 It also includes the full criminal history and arrest
19 reports for each of the defendants. We have unsealed those as
20 to each of the defendants. We're currently in possession of
21 the arrest report for every one of the prior arrests of every
22 one of these defendants. It's possible there are a few
23 youthful offender arrests that we're not aware of, but I do
24 believe that we're aware of every one of their prior arrests
25 and that we have all of the records.

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1 THE COURT: Okay. Good. Does this cover the species
2 of discovery or is there more?

3 MR. McDONALD: There's a little bit more, your Honor.

4 THE COURT: Go ahead.

5 MR. McDONALD: The defendants have communicated about
6 gang activity over social media and in particular over
7 Facebook. I mentioned just one example, the message that
8 defendant Wali Burgos sent to the rival gang leader after the
9 attempted murder saying "almost." The government has obtained
10 a Facebook search warrant and we have the returns of that
11 Facebook search warrant. Those returns are voluminous. They
12 are tens of thousands of PDF pages.

13 THE COURT: How many defendants have Facebook accounts
14 that you've gotten?

15 MR. McDONALD: Your Honor, I don't have the number in
16 front of me, but it's the vast majority. In fact, I think
17 every one of the defendants had a Facebook account. I'm not
18 certain about that, but it's close to that, if not all of them.

19 The final category, your Honor, is just individual
20 discovery with respect to each defendant. This would be the
21 pedigree information that was taken upon this arrest, the
22 photos of tattoos, I mentioned criminal history and arrest
23 reports that we had unsealed, any statement made to law
24 enforcement either in connection with these arrests or in prior
25 related matters.

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1 Now, I am not aware right now of any statements to law
2 enforcement that were made during the December 9.

3 THE COURT: That's getting to search/seizure issues.
4 All right.

5 In terms of Rule 16 discovery, you mentioned several
6 times a discovery plan. Tell me about it.

7 MR. McDONALD: Your Honor, the government proposes
8 that discovery proceed in two phases. Phase 1 would take place
9 over the next 30-day period. We expect to have Phase 1
10 completed within 30 days, and the material that I'm about to
11 mention would be produced on a rolling basis over that 30-day
12 period. That would include both the Southern District of New
13 York wiretaps and associated materials and the Northern
14 District of New York wiretaps and associated materials; the
15 prison calls and emails from the federal and state facilities;
16 the materials related to the undercover purchases, which
17 includes the audio and video where it was available; the pole
18 camera footage, and I'll come back to that in just a minute,
19 but the pole camera footage; the Facebook search warrants, the
20 returns, the associated orders and applications; and the
21 individual discovery including the raps, pedigrees, any
22 statements, photographs. We propose to have that completed
23 within the first 30-day period.

24 And then we propose for there to be a second phase or
25 a second 30-day period. In that second 30-day period, we would

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1 produce the search warrants and associated materials from the
2 December 9 arrests and executions of the search warrant. That
3 would include the application, the items seized, any video or
4 photo that was taken in connection with either the arrests or
5 the execution of the search warrants. The reason that we
6 propose this to be part of the second phase is some of that
7 material hasn't been generated yet, like lab reports with
8 respect to the drugs that were seized.

9 THE COURT: I take it the affidavits and applications
10 could be produced quickly. It's the returns; it's the
11 byproduct of the search that's more problematic.

12 MR. McDONALD: That's correct, your Honor. I probably
13 should have included part of this in Phase 1. I expect we will
14 be able to produce the search warrants and the affidavits.

15 THE COURT: Why don't we move that to Phase 1 if it's
16 preexisting.

17 MR. McDONALD: Of course.

18 The second category of material that we would include
19 in Phase 2 are the NYPD complaint reports, arrest reports, and
20 associated discoverable materials that I had mentioned
21 previously with respect to the incidents of violence and other
22 illegal conduct that's alleged in the indictment. The reason
23 that we would put that in the second category is with respect
24 to those we have -- we have almost all of it. We're still
25 working to make sure that we have the complete universe of

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1 documents.

2 THE COURT: Can I ask you as to that material, is that
3 old-fashioned hard copy or is it kept electronically?

4 MR. McDONALD: It's old-fashioned hard copy, your
5 Honor, but we've scanned it and we have it in electronic
6 format. And a lot of that material needs to be redacted and
7 because of the volume of that material, it's going to take us
8 just a little bit of time to complete the redaction process.
9 The reason we want 60 days for that is because we know that
10 that redaction process can take some time.

11 And then, finally, the individual discovery that
12 includes the sealed arrests from each defendant, same issue
13 with respect to redactions. There are a number of victims who
14 are included on that paperwork. There are a number of other
15 sensitive information that we would need to redact. And like I
16 said, we have all of that information. It's subject to an
17 unsealing order, but it's voluminous. It will take us a little
18 while to go through it to redact it.

19 Finally, any new discovery that's generated after this
20 date. As I mentioned earlier, this investigation is ongoing.
21 And, in particular, it's ongoing with respect to both the
22 May 29, 2011 murder of Johnny Moore and with respect to other
23 murders and attempted murders.

24 THE COURT: So as to new discovery, you've already
25 identified a few categories. One is that there are, for

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1 example, cell phones that you've received but not yet got
2 warrants to or in any event searched. Another is that the
3 investigation is ongoing; you may learn about other incidents
4 and that may occasion such things as looking at new state court
5 files and the like.

6 MR. McDONALD: Yes, your Honor.

7 THE COURT: All right. Is it really the case that
8 there were no postarrest statements from any of the people
9 arrested this week?

10 MR. McDONALD: Your Honor, there were no postarrest
11 statements made during debriefings that we're aware of. We are
12 not yet aware with respect to each of the defendants whether
13 there were any spontaneous statements or any statements made to
14 law enforcement that we're in a position to represent to the
15 Court now during the course of the arrests. There were dozens
16 of arrests on Wednesday, and we just haven't had the time to
17 debrief each of the officers.

18 THE COURT: You may yet learn of them, but you don't
19 know now.

20 MR. McDONALD: I don't want to represent that there
21 were none, but there are none we're prepared to represent to
22 the Court.

23 THE COURT: Help me with the mechanics of this. In
24 the previous case I've alluded to a few times, a discovery
25 coordinator was appointed who functioned as something of a

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1 clearinghouse and, in effect, a common database was used. Have
2 you given thought to the mechanics of making this vast amount
3 of material available to a couple dozen defense counsel?

4 MR. McDONALD: Yes, your Honor, and we have a proposal
5 on that as well. I believe this tracks what was done in the
6 Trinitarios case, that there would be hard drives provided to
7 the government that would be paid for by the CJA office. We
8 would then load it with discovery. We would give the hard
9 drives back to defense counsel, and we would make those hard
10 drives available at the jails.

11 We're still working out the specifics as to how that
12 material would be made available at the jail at the different
13 facilities. But what had been done in the past and what I
14 expect we'll be able to arrange here would be to have that
15 material available for the defendants in the library and they
16 could view it even outside the ordinary library time periods.
17 Again, we're still working on that. It depends on how many
18 defendants ultimately end up at each different facility.

19 THE COURT: With a hiccup here and there, there was I
20 thought actually a very good functioning system in the
21 Trinitarios case. I'm more interested in issues relating to,
22 for example, the scale presented by the Title IIIs. If memory
23 serves, those weren't I think provided entirely on individual
24 hard drives so much as there was a common database to which
25 counsel had access.

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1 MR. McDONALD: So the two things that would not go on
2 the hard drive are the Title III and the pole camera footage.
3 And with respect to both of those, we would propose using a CJA
4 discovery coordinator. And we would either have a central
5 database for the Title III material, or we would simply provide
6 it to the CJA discovery coordinator.

7 THE COURT: How do you go about getting that? I'm all
8 in favor of that. It seemed to work well last time, and it was
9 useful to have one person who owned that process. How quickly
10 can you get that up and running?

11 MR. McDONALD: I'm not sure exactly how quickly we can
12 get it up and running, but we'll work as quickly as we possibly
13 can.

14 THE COURT: I see here Ms. Heller; you obviously have
15 a good resource for working through that. But I encourage you
16 to prioritize it because it worked very well last time and I
17 think the sooner you can get that architecture set up, the
18 better.

19 MR. McDONALD: Yes, your Honor. We've been working on
20 it. We'll continue to work on it as soon as we leave the court
21 today.

22 THE COURT: Anything further you want to bring to my
23 attention with respect to Rule 16 discovery?

24 MR. McDONALD: Nothing with respect to Rule 16.

25 THE COURT: Were you about to say something?

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1 MR. McDONALD: Go ahead.

2 THE COURT: The next topic I had and I think you've
3 largely but perhaps not completely covered this is usually in
4 criminal cases, I try to spot at the initial conference the
5 outer range of law enforcement activity that by its nature
6 tends to produce occasionally, anyway, suppression motions:
7 searches, seizures, postarrest statements, identification
8 procedures. More often than not, it's warrantless searches and
9 seizures that generate motion practice.

10 Is there anything you can tell me now that can give me
11 a shape of the whole or give individual defendants a little
12 more color as to what's out there?

13 MR. McDONALD: Your Honor, I think we've largely
14 covered it in our discussion about the Rule 16 material. The
15 Title III wiretaps, the searches and seizures that we had
16 discussed and evidence of that sort.

17 My colleague reminds me that the police files for
18 those incidents will make evident the Fourth Amendment events.
19 For each of the particular incidents there are a variety of
20 Fourth Amendment events. Many of them -- for example, one of
21 the defendants is stopped. He's stopped because there's video
22 surveillance that shows the defendants committing a shooting.
23 After having viewed the video surveillance, the officer stops
24 the defendant having recognized him from the video and
25 recognized him in the vicinity of the Patterson Houses area or

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1 in the vicinity of where the shooting occurred, stops him,
2 frisks him, and finds a gun. There are a number of incidents
3 like that. I don't want to go through each one of them.

4 But in terms of the categories, I think there are the
5 Title III intercepts, the searches and seizures conducted
6 pursuant to warrants, and then the searches and seizures
7 conducted without a warrant but pursuant to some other valid
8 basis.

9 THE COURT: So in smaller criminal cases, I tend to
10 use the second conference as the deadline for defense counsel
11 to indicate if they want to make a suppression motion. From
12 everything you told me, that's completely unrealistic here
13 because defense counsel will need to, among other things,
14 burrow through the state court incident files, if you will, to
15 determine whether, for example, there might be a search or
16 seizure that they would want to challenge.

17 Am I reading that right?

18 MR. McDONALD: I think that's correct, your Honor.
19 The only thing that I'd say is that from the government's
20 perspective, that discovery is voluminous. But from each
21 particular individual defendant's perspective --

22 THE COURT: There's the matter of finding Waldo,
23 right. The problem is you've got so much material here that it
24 may not be realistic on the discovery schedule to throw the
25 burden on any counsel by 60 days from now or two and a half

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1 months from now to even know the range of potential Fourth
2 Amendment activity to which they may have standing to
3 challenge.

4 MR. McDONALD: Sure.

5 THE COURT: All right. That's extremely helpful. Let
6 me just pause and compliment you for a very well organized,
7 helpful presentation. Obviously, helpful to me, but I'm sure
8 it's extremely helpful to defense counsel, as well, just to get
9 a shape of what lies ahead.

10 With that in mind, before I call on the defense, it
11 had been my intention to schedule a next conference probably in
12 the first week of March or so, anticipating something like
13 this. Does the government have a view about that?

14 MR. McDONALD: I believe before your Honor took the
15 bench, we had discussed the possibility of March 2. That would
16 work for the government.

17 THE COURT: Not just a matter of your availability,
18 but does that sound like a realistic time to next check in
19 given the range of discovery that's about to be made available?

20 MR. McDONALD: I think it does, your Honor. The first
21 30-day phase would end January 11. The second 30-day phase
22 would end I believe on February 10. That would be about a
23 month after that second 30-day phase. To the extent there are
24 any issues the parties would need to bring before the Court, I
25 think that would give us about a month to work on resolving

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1 them before we brought them to the Court.

2 Your Honor is correct that it may not be that defense
3 counsel is aware of all of the Fourth Amendment issues that
4 defense counsel may want to bring to your attention, but I
5 think they would be aware of the major ones at that point to
6 the extent there are any.

7 THE COURT: Okay. Thank you.

8 Let me turn now to the defense. Again, focusing on
9 macro issues, not defendant specific issues, anything anyone
10 wants to bring to my attention or raise at this point? I
11 realize this all landed on you in the last 48 hours, but we
12 have estimable and multiple defense counsel here. Any views?

13 Mr. Siegel, I'll ask everyone to use the microphone
14 near Mr. London just so we can all hear.

15 MR. SIEGEL: I have a microphone here. Jesse Siegel
16 for Wilfredo Rivera.

17 Just listening to the volume of discovery, happy to
18 come back in March, but it doesn't really seem like we're going
19 to do anything more at that point or be able to do anything
20 more than just hear from the government whether more discovery
21 is coming our way. It's hard to imagine we're going to really
22 have a handle in any meaningful way on this volume of discovery
23 at that time. So if that's what the Court thinks is useful,
24 happy to do it, but I don't think it's realistic to expect more
25 than that.

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1 THE COURT: Well, I think it's not realistic to impose
2 on the defense at that point an obligation to come forward and
3 commit to suppression hearings; that certainly I agree with you
4 on. But I'm quite reluctant to defer a next conference until
5 much after that because you all may be discovering things about
6 the case that you urgently want to bring to my attention or
7 there may be some scheduling things we can do to get out of the
8 way. It also is, frankly, a useful way for me to check in to
9 make sure that all the discovery protocols here are working.

10 Veterans of the last case will know, will report to
11 all of you, and there are several among the defense group here,
12 that there were occasional hiccups with respect to defendant
13 access to discovery at the MDC or MCC. And it was useful,
14 frankly, as an enforcement device to have a conference here
15 before me. It made sure that everyone ventilated those issues.
16 It made sure that meaningful access was in fact being provided.

17 So it seems to me that while I may have been more
18 ambitious in my thinking behind yesterday's order about what
19 might be able to be accomplished at the next conference, it's
20 important for us all to gather.

21 MR. SIEGEL: I agree, just to touch base about that.
22 It's also my experience when I hear 30 days and 60 days, I'm
23 thinking 45 days and 75 days because there are these hiccups
24 which are inevitable.

25 THE COURT: All right. Thank you, Mr. Siegel.

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1 Any other views? Mr. DiChiara, just use the
2 microphone.

3 MR. DiCHIARA: Gerald DiChiara, your Honor. I would
4 ask if the Court would authorize for CJA a transcript of
5 today's proceedings.

6 THE COURT: Authorized.

7 And, in fact, Mr. McDonald, I was going to say to you
8 the following. Inasmuch as you're going to be having other
9 defendants brought into the case, your presentation here was
10 exceptionally helpful. I'm not going to make you give it at
11 each individual conference. So please make that transcript
12 available to counsel as they come into the case for other
13 defendants so that when we have an initial conference, I can
14 incorporate that by reference.

15 MR. McDONALD: Of course, your Honor.

16 THE COURT: All right. Anyone else on the defense
17 side?

18 MR. TULMAN: Good morning, your Honor. Scott Tulman
19 for Kaye Rosado. I apologize, your Honor, I was tardy.
20 Mr. Dunn, Tom Dunn, initially stood up for me and he left and I
21 had been here for some time at that point.

22 THE COURT: You notified my chambers you were running
23 late and I appreciate it.

24 MR. TULMAN: Your Honor, just one consideration and
25 that is with respect to the hard drives. And I know that this

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1 is, particularly given the number of defendants and given the
2 lack of resources with the hard drive, if there's some way to
3 somehow figure out how to get these on discs because I know
4 that at the MCC, there are at the individual floors the inmates
5 are able to view it on discs.

6 THE COURT: You're making a point as to access for the
7 defendants as opposed to counsel.

8 MR. TULMAN: Yes, I'm addressing the issue of access
9 of the defendants, because a lot of times, of course, it's the
10 defendants who know best the discovery that they need to review
11 and so it's just a consideration about making up discs as well.

12 THE COURT: All right. At this point, we're enough
13 under the hood that it's not productive for me to resolve it.

14 I'll just say this, Mr. McDonald. I don't know that
15 any of us can foresee the technology that's going to be
16 necessary. Mr. Tulman makes a good point that it may be that
17 some other mechanical way of making it usefully available is
18 better. I know you'll be sensitive to that. And when we have
19 discovery counsel in place, coordinator in place, that person
20 will own this as well. But I trust you'll be receptive to
21 concerns like that.

22 MR. McDONALD: Yes, your Honor.

23 THE COURT: Anyone else?

24 Let me just confirm what I think is obvious. I take
25 it no defense counsel is seeking a trial date at this point?

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1 MR. SIEGEL: No, your Honor.

2 MS. CARVLIN: No, your Honor.

3 THE COURT: The record will reflect a chorus of no's.

4 All right. Given that, is there any reason I
5 shouldn't set as our next conference March 2 at 9:30?

6 MR. McDONALD: Works for the government, your Honor.

7 THE COURT: I'm going to set the next conference for
8 March 2 at 9:30.

9 I expect at that conference, among other things, the
10 following will happen. I will want a detailed report from the
11 government on the status of discovery. Certainly, my hope is
12 that you'll be able to comply with the schedule that you've set
13 out as to the production of discovery, but I also expect that
14 there will be inevitably some more discovery and I'll want a
15 report of the same nature that you gave today as to that.

16 I'm also going to be very interested in mechanical
17 issues regarding access to discovery. I expect government
18 counsel and defense counsel will be in close coordination with
19 what I expect will be a soon to be appointed discovery
20 coordinator so I can learn about any issues. It goes without
21 saying that if any hiccups arise, any issues that any counsel
22 is aware of, if you can't resolve it yourself, make an
23 application to me. Sometimes my intervention can help get the
24 relevant party's attention.

25 Government, I will want at that next conference to

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1 understand where we're headed here. I think it's important for
2 the defense to have the two and a half months to begin to make
3 sense of the discovery material.

4 And, defense, I expect you, notwithstanding that I'm
5 not going to be requiring you to announce suppression motions
6 at the next conference, I expect you to be working hard to get
7 through this material so that you have a sense of the direction
8 of the case from your perspective.

9 Government, I'll ask you with all the things you've
10 got going to prioritize communicating to individual defense
11 counsel where to look to the best of your knowledge in the
12 discovery material for the matters most relevant to each
13 client. Putting myself in the shoes of defense counsel, it's
14 very hard to know where to look in the Rule 16 material. So I
15 encourage you to be proactive in alerting defense counsel,
16 understanding that your knowledge is bounded by what you know
17 at any particular time, what the particular incidents are, what
18 the calls are that you think would be most productive for them
19 to look at. The sooner we can arrive at some greater parity of
20 information, the sooner the log jam begins to break.

21 MR. McDONALD: Yes, your Honor.

22 THE COURT: All right. Defense, I would like to ask
23 that somebody step up within the defense group to be a de facto
24 coordinator. I'm not, to be clear, asking that you form a
25 joint defense group; and I'm not asking, to be clear, that

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1 somebody be the head of it. I want one person who can play
2 round up here, who can, if I issue an order with respect to
3 dates, I don't want to have to get 15 letters. I'd like
4 somebody to be corralling the troops just for logistical
5 purposes.

6 MR. LONDON: I nominate Jesse Siegel.

7 THE COURT: Mr. Siegel, are you going to give a
8 Sherman-like denial here?

9 MR. SIEGEL: If drafted, I will serve, Judge.

10 THE COURT: You're drafted.

11 To be clear, Mr. Siegel is not here to clean the
12 Augean stables. He's here simply because he's graciously as a
13 respected veteran of the panel and these cases to communicate
14 among you. Please get Mr. Siegel your contact, in particular
15 email information, so that a defense group can arise promptly.

16 Mr. Siegel, thank you.

17 MR. SIEGEL: Thank you, Judge.

18 THE COURT: Is there an application for the exclusion
19 of time between now and March 2?

20 MR. McDONALD: There is, your Honor. The government
21 moves to exclude time under the Speedy Trial Act so that the
22 defense counsel and the defendants can begin reviewing
23 discovery and so that the parties can discuss possible
24 resolutions of the case short of trial.

25 THE COURT: Okay. Any objection to the exclusion of

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1 time?

2 MS. CARVLIN: No, Judge.

3 THE COURT: I'll exclude the time between now and
4 March 2 pursuant to Title 18, United States Code, Section
5 3161(h)(7)(A). For avoidance of doubt, that time runs as to
6 all defendants in the case, not merely the ones who are
7 present. I am doing so because there is an overwhelmingly good
8 reason to think that the interests of justice support the
9 exclusion of time and outweigh the interests of the public and
10 the defendants in a speedy trial.

11 Most obviously, there is a veritable dump truck of
12 Rule 16 material that is going to be served upon or made
13 available to defense counsel, who have a lot of work ahead of
14 them. And I want to make sure the defense counsel has plenty
15 of time to begin to make sense of this multidimensional,
16 complicated, important case.

17 In addition, I'm mindful that defense counsel have
18 only gotten to know their clients with perhaps one or two
19 exceptions in the last 48 hours. So the time excluded is also
20 intended to allow defense counsel to connect with their clients
21 and begin to understand the situation presented by each of
22 their individual situations and to begin to make appropriate
23 investigation.

24 Government, I'm going to ask you to submit a letter
25 three work days before the next conference giving me a report

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1 on all things relating to the case. I'll ask you to confer
2 with the defense beforehand. The goal here is as follows.
3 When I've got 25 defendants and defense counsel in a room, it's
4 hard to be very nimble in resolving things. And so to the
5 extent there are issues or things productively brought to my
6 attention beforehand, I can reflect on that and be better
7 prepared before the next conference.

8 So three work days before the next conference, I'd
9 like a status report from the government informed by your
10 discussions with the defense such that if, for example, there
11 are practical issues vis-a-vis discovery that you're becoming
12 aware of, your letter should reflect your knowledge based on
13 your conversations with defense counsel.

14 All right?

15 MR. McDONALD: Yes, your Honor.

16 The final thing from the government, I know the Court
17 will be aware of this, but I believe in order for us to
18 actually proceed with the discovery coordinator, the Court
19 needs to appoint the discovery coordinator.

20 THE COURT: Very good. Just get me an order. I'll be
21 glad to appoint one. I believe it was Emma Greenwood who was
22 discovery coordinator last time. I don't know that one person
23 should do this twice in a lifetime, but if she's willing, she
24 was great.

25 Anything further from the government?

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1 MR. McDONALD: Nothing further, your Honor.

2 THE COURT: Anything from any defense counsel?

3 MS. CARVLIN: No, your Honor.

4 THE COURT: Thank you. I wish you all well.

5 We will resume in 15 minutes to complete the hearing
6 on the bail appeal with respect to defendants Dentico and
7 Brown. We'll do that here.

8 Thank you.

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